

DEPARTMENT OF BENEFIT PAYMENTS

744 P Street
Sacramento, California 95814



February 7, 1975

ALL-COUNTY LETTER NO. 75-36

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: VARELA ET AL. v. SWOAP ET AL.

REFERENCE:

On February 4, 1975, Sacramento County Superior Court Judge Irving H. Perluss signed a Preliminary Injunction implementing a Memorandum Opinion filed in the subject case on December 18, 1974. To comply with the Preliminary Injunction, which is effective as of the date of service, February 5, 1975, you are instructed as follows:

1. The October 31, 1973 letter addressed to All County Welfare Directors by David B. Swoap (subject: "Aid to Aliens") is hereby rescinded.
2. The public assistance eligibility of an alien who has completed an Alien Status Verification form (WR 6) shall not be terminated solely because the Immigration and Naturalization Service has been unable to identify any record relating to such alien. Any recipient who has been terminated solely for such reason since February 5, 1975, shall have his public assistance eligibility restored, retroactive to the date the eligibility was terminated.
3. The current Alien Status Verification form (WR 6) shall be continued in use until it is revised, but no alien applicant or recipient shall be requested to complete this form until it is modified by deleting the words "is in the country legally and" in part B of the certification.

OBSOLETE

ALL COUNTY WELFARE DIRECTORS
February 7, 1975
Page Two

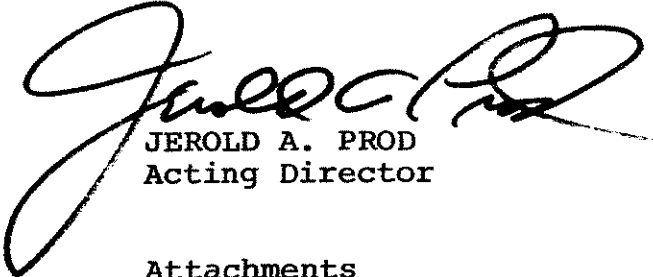
4. Determination of the eligibility of alien applicants for AFDC and use of the WR 2 form shall be consistent with the foregoing procedures.

The foregoing instructions are interim measures to comply with the Preliminary Injunction. Emergency regulations clarifying eligibility determination and verification procedures for aliens will be adopted shortly. The WR 2 and the WR 6 forms will also be revised.

Questions concerning implementation of the Preliminary Injunction in this case should be addressed to the AFDC Program Operations Bureau (916) 445-4458.

Copies of the Preliminary Injunction and the Memorandum Opinion are attached.

Sincerely,



JEROLD A. PROD
Acting Director

Attachments

cc: CWDA

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

RAFAELA VARELA, et al,)
Plaintiffs,)
-v-)
DAVID SWOAP, et al,)
Defendants.)

PRELIMINARY INJUNCTION

No. 251426

ENDORSED:

Filed

W. N. DURLEY, CLERK
BY F. SEARLE, DEPUTY

674-1080

2-5-75

The application for a Preliminary Injunction made herein came on regularly to be heard on November 14, 1974 pursuant to a Notice of Motion of Plaintiffs. PETER SCHEY, LEGAL AID SOCIETY OF SAN DIEGO, appeared as counsel for Plaintiffs and THOMAS E. WARRINER, Deputy Attorney General, appeared as counsel for Defendants.

Proof having been made to the satisfaction of the Court, the matter having been submitted to the Court, it appears to the Court that Defendant DAVID SWOAP'S letter TO ALL COUNTY WELFARE DIRECTORS of October 31, 1973 violates Government Code § 11373 in that the requirements set forth in said October 31, 1973 letter as to what an alien must certify to in order to be eligible for public assistance are inconsistent with, alter the scope of and impair W&I § 11104.

Furthermore, it appears to the Court that the last sentence of EAS § 42-407.131 and Defendant's form designated WR-6 violate Government Code § 11373 in that EAS § 42-407.131 and the WR-6 which require public assistance benefits to terminate if the U.S. Immigration and Naturalization Service (INS) is unable to verify the alien's status and replies to the County Welfare Department that it has no

1 record of the alien, are inconsistent with, alter the scope of and
2 impair W&I Code § 11104. It therefore appears to the Court that
3 there is a reasonable possibility that Plaintiffs will prevail on
4 the merits.

5 NOW, THEREFORE, IT IS HEREBY ORDERED that during the pen-
6 dency of this action, Defendant, STATE DEPARTMENT OF BENEFIT PAYMENTS
7 and Defendant, DAVID SWOAP, his successors in office, officers, agents,
8 employees, representatives, and all persons acting in concert or par-
9 ticipating with him or subject to his control or supervision includ-
10 ing all County Welfare Directors, shall be and are hereby effective
11 immediately prohibited and enjoined from:

12 1. Using Defendant's DAVID SWOAP'S Letter TO ALL COUNTY
13 WELFARE DIRECTORS of October 31, 1973 in determining the eligibility
14 of aliens for public assistance benefits and;

15 2. Using the last sentence of EAS § 42-407.131 and De-
16 fendant's form designated WR-6 when INS replies that it has no re-
17 cord of the alien as a basis to terminate public assistance benefits.

18 DATED: FEB 4 - 1975

19
20 **IRVING H. PERLUSS**

21 IRVING H. PERLUSS
22 JUDGE OF THE SUPERIOR COURT

23
24 **ATTEST:**

25 **W. H. DUNN, CLERK**
26 **By F. SCARLE**
27 **DEPUTY CLERK**
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

RAFAELA VARELA, et al.,
Plaintiffs,

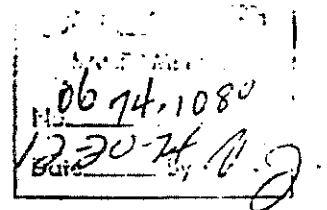
vs.

DAVID SWOAP, et al.,
Defendants.

NO. 251426

DEPT. 12

MEMORANDUM OPINION



Extrinsic aids are not necessary to ascertain the legislative intent in enacting Section 11104 of the Welfare and Institutions Code. The language of that section is clear and explicit. Pursuant to Section 11104, an alien, otherwise qualified, is eligible for aid upon his certification that to the best of his knowledge he is in the country legally and entitled to remain indefinitely or if he certifies that he is not under orders for deportation or if he certifies that he is married to an individual not under orders for deportation.

By requiring an alien seeking to qualify under the second and third categories to certify that he is in the country legally, defendant indeed has exceeded the authority granted him by the Legislature to implement and apply the statute. Obviously, if the defendant's interpretation were correct, there would be no need for the second or third categories at all. Under Federal

law, it is not only aliens lawfully admitted to this country who may be entitled to aid -- there also may be included those aliens permanently residing in this country under color of law (45 C.F.R. Section 233.50), and this provides a reason for the legislative enactment of the second and third categories.

The Court has examined "Alien Status Verification Form WR6" which defendant requires each county welfare department to use in seeking verification of an alien's status from the United States Immigration and Naturalization Service. The form provides a place wherein the Service may report that it has no record of the alien, and thereupon aid to the alien is terminated or refused.

This procedure also, in the Court's view, goes beyond the defendant's authority. The inability to find a record in our gigantic bureaucracy of itself should not and does not overcome a positive certification.

A preliminary injunction will issue restraining defendant from further utilization of his letter of October 31, 1973, relating to Section 11104 of the Welfare and Institutions Code and his interpretation of the statute set forth therein, and from further use of Form WR6 as it presently reads.

Plaintiff will be required to post a nominal bond in the amount of \$100.00.

DATED: DEC 18 1974

~~WILLIAM T. FRIEDMAN~~

JUDGE OF THE SUPERIOR COURT